

## STATEMENT OF SCOPE OF PROPOSED RULES

### SUBJECT

The Department proposes to repeal and recreate ch. HFS 117, rules relating to fees for copies of patient health care records.

### POLICY ANALYSIS

In 1993, the Department created ch. HFS 117 to prescribe uniform fees for certified duplicate health care provider records pertaining to particular patients when those records are requested under s. 908.03 (6m) (c) 3., Stats., by attorneys. Over the subsequent 9 years, both the fee amounts specified in ch. HFS 117 and circumstances under which the fee limits apply have been contentious subjects. The statute did not explicitly declare whether the fee limits issued under s. 908.03 (6m) (d), Stats., applied only when a case was actively in litigation or, alternatively, whether the fee limits applied also to requests by attorneys even when no case had been filed with a court or administrative hearing body. Meanwhile, s. 146.83, Stats., allowed health care providers to charge a "reasonable cost" for providing copies of patient health care records to requesters under s. 146.83, Stats., and that phrase was not defined. It was unclear which situations were controlled by the ch. HFS 117 fee limits and which were controlled by s. 146.83, Stats. It was also unclear what constituted a "reasonable cost" when the fee limits of ch. HFS 117 were inapplicable and only s. 146.83, Stats., applied. As a result, frequent disputes occurred concerning fees for copying of patient health care records.

2001 Wisconsin Act 109 modified the statutory requirements upon which ch. HFS 117 was based. Principally, Act 109:

1. Amended s. 908.03 (6m) (d), Stats., to explicitly declare that commencement of an action is not a prerequisite for the application of the ch. HFS 117 fee limits to copying performed under that statute.
2. Amended s. 146.83 (1) (b) and (c), Stats., pertaining to access by a patient or person authorized by a patient to health care records. These amendments extend the applicability of the fee limits the Department specifies in ch. HFS 117 to all requests for health care record copies in all settings controlled by s. 146.83, Stats. (not just requests from attorneys, nor just with respect to cases in litigation.)
3. Created s. 146.83 (3m), Stats., which directs the Department to prescribe copying fees that are based on an approximation of actual costs incurred by entities producing the copies.

Pursuant to a nonstatutory directive in 2001 Wisconsin Act 109, to develop the initial proposed rules, the Department will establish an advisory committee composed of members who represent a balance of persons who maintain patient health care records and persons who request patient health care records.

### STATUTORY AUTHORITY

The Department's authority to promulgate these rules is under ss. 146.83 (1) (b) and (c) and (3m) and 908.03 (6m) (d), Stats.

### STAFF TIME REQUIRED

The Department estimates it will take 50 hours of staff time to develop the proposed rules, including the time required to staff the advisory committee mentioned above.

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**APPROVAL SIGNATURES**

Administrator

Date Signed

Secretary

Date Signed